IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5443 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SONJIBHAI VIRCHANDBHAI VAGHRI (PATNI)

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr. S.T. Mehta, ld. A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 10/01/2000

ORAL JUDGEMENT

Heard learned Advocate Ms. S.G. Patel on behalf of the petitioner and learned A.G.P. Mr. S.T. Mehta for the respondents nos.1,2 and 3.

1. The detention order dated 9-4-1999 passed by the respondent no.2-District Magistrate, Banaskantha against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 (" PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention served to the petitioner under Section 9(1) of "PASA", copy of which is produced at Annexure "B" inter alia indicate that six offences punishable under Section 379 of the Indian Penal Code have been registered at Palanpur Police Station against the petitioner between the period from 12-5-1998 to 7-10-1998. That the petitioner was arrested on 10-11-1998 and was released on bail on 21-11-1998.

3. That in consideration of the aforesaid material the detaining authority has come to the conclusion that the petitioner is a dangerous person within the meaning of Section 2(c) of "PASA". That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activities, and thereby in order to prevent the petitioner from continuing his such activities, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the bar on behalf of the petitioner that the last offence registered against the petitioner is dated 7-10-1998 and yet, the impugned order on the basis of material of offences registered against the petitioner is passed on 9-4-1999 i.e. after a delay of about five months and four days, and as such, on account of inordinate delay in taking the impugned action, the subjective satisfaction reached by the detaining authority stands vitiated, thus rendering the impugned order invalid.

It is also contended that before passing the impugned order, the detaining authority has failed to consider the aspect of less drastic remedy of opposing and claiming cancellation of bail available under Section 437(5) of the Cr.P.C. The petitioner has amended the petition and inserted this specific ground vide paragraph 11(A). Thus, on account of non application of mind also, the subjective satisfaction arrived at by the detaining authority while passing the order of detention stands vitiated and the order of detention is invalid.

5. It is noteworthy that no affidavit-in-reply has

been filed on behalf of either of the respondents. Learned A.G.P. Mr. S.T. Mehta referring to the original file on instructions has contended that the Muddammal has been recovered from the petitioner and considering the number of offences registered against him the impugned order is justified in view of the nature of offence committed.

In overall consideration of the facts and circumstances apparent from the record, it is difficult to accept the said submission of learned A.G.P.

6. In the matter of PRADEEP NILKANTH PATURKAR VS. S. RAMAMURTHY & ORS. (AIR 1994 SC 656), the Supreme Court having considered the earlier authority has observed that unexplained delay in taking action is fatal to the validity of the detention order. The same proposition has been reiterated by this Court in the matter of ELESH PATEL VS. COMMISSIONER OF POLICE (1997(1) G.L.H. 381) after considering the various authorities of the Supreme Court.

7. In the instant case also, the impugned order does not disclose any explanation for delayed action of passing the impugned order. No affidavit-in-reply has been filed to explain the same. Prima facie, the offence registered on 7-10-1998 which is made the basis of the impugned order dated 9-4-1999, clearly suggests that the live link between the alleged prejudicial activity of the petitioner and the impugned action having been snapped , the impugned order is invalid.

8. It is also noteworthy that in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT reported in 1995(2) G.L.R. 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Sec.437(5) of the Cr.P.C. to claim cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction rendering the detention order bad in law.

9. In the instant case also, the respondents are not in a position to explain why the aspect of less drastic remedy has not been considered by the detaining authority. The impugned order is totally silent on this aspect, and as such, I am constrained to hold that the impugned order is invalid and bad in law.

10. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide, the other contentions raised in the petition.

10. On the basis of the aforesaid discussion, the petition is allowed. The order of detention dated 9-4-1999 passed by the respondent no.2-District Magistrate against the petitioner is hereby quashed and set aside. The petitioner-detenu-Sonjibhai Virchandbhai Vagri is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute to that extent.

It is stated at the Bar that the detenu has been transferred from Jamnagar Jail to Ahmedabad Central Jail pending the final hearing of this petition. As such, the writ of this order be also sent to the Superintendent, Ahmedabad Central Jail.

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